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**MAY 26 2005**

Docket No.: 30007697-2 (1509-165)

**PATENT**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of

Stephen GOLD et al.

U.S. Patent Application No. 09/826,811

: Group Art Unit: 2172

Filed: April 6, 2001

: Examiner: Baoquoc N. TO

For: QUOTA MANAGEMENT IN CLIENT SIDE DATA STORAGE BACK-UP

**PETITION TO THE COMMISSIONER UNDER 37 C.F.R. 1.181**

Commissioner For Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Applicants petition to have the May 5, 2005 Office Action rescinded because it does not comply with MPEP §1208.02.

**FACTS**

On November 19, 2003, a Final Rejection was issued. On January 20, 2004, an amendment was filed. On February 9, 2004, an Advisory Action was issued refusing entry of the January 20 amendment. On February 19, 2004, a Petition to have the Amendment after Final Rejection entered was filed. On April 16, 2004, an Advisory Action entering the January 20 amendment was issued. Both Advisory Actions maintained the Final Rejection. On July 12, 2004, applicant filed a Brief on Appeal. On May 5, 2005, a new non-final Office Action was issued. The May 5, 2005 Office Action does not specifically state that it was approved by the Examiner Supervisory Primary Examiner, as MPEP 1208.02 implies is necessary and does not give applicant the option of filing a reply under 37 C.F.R. 1.111 or requesting reinstatement of the appeal as required by MPEP 1208.02.

**CERTIFICATION OF FACSIMILE TRANSMISSION**

I HEREBY CERTIFY THAT THIS PAPER IS BEING FACSIMILE TRANSMITTED TO THE PATENT AND TRADEMARK OFFICE

ON THE DATE SHOWN BELOW

Tracy A. Luke

TYPE OR PRINT NAME OF PERSON SIGNING CERTIFICATION

Tracy A. Luke 5/26/05

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PATENT

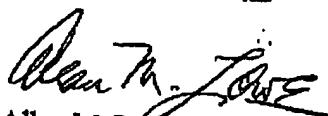
ARGUMENT

Based on the foregoing, revision of the May 5, 2005 Office Action and issuance of a new paper is in order. Applicant also notes that 37 C.F.R. 41.39(2) implies that if the Examiner continues with the rejection set forth in the May 5, 2005 Office Action, the rejection should be incorporated in an Examiner's Answer and applicant should be given the option of responding by filing a reply under 37 C.F.R. 1.111 or requesting reinstatement of the appeal.

The Commissioner is hereby authorized to charge any necessary fees to Deposit Account 08-2025 and direct any inquiries in connection with this application directly to the undersigned.

Respectfully submitted,

Stephen GOLD et al.



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